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(12)



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D C 20230

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

EMC Corporation
4400 Computer Drive
Westboro, Massachusetts 01580

Attention: Constance Goulatis. Esq.
Contracts Manager
Data General Division

Dear Ms. Goulatis :

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described in detail below, EMC Corporation, through its Data General Division (formerly the Data General Corporation) (hereinafter referred to as "Data General"), has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1991 & Supp. 2000)) (the Act).²

¹ The alleged violations occurred in 1995. The Regulations governing the violations at issue are found in the 1995 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured. The restructured Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), and August 10, 1999 (3 C.F.R., 1999 Comp. 302 (2000)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)).



UNITED STATES DEPARTMENT OF
COMMERCE
NEWS

WASHINGTON, D.C. 20230

BUREAU OF
EXPORT
ADMINISTRATION

FOR IMMEDIATE RELEASE:
August 3, 2000
www.bxa.doc

Contact: Steven Jacques
Eugene Cottilli
Phone: (202) 482-272 1
Fax: (202) 482-242 1

MASS. FIRM SETTLES CHARGES OF EXPORT CONTROL VIOLATIONS

Washington -- U.S. Department of Commerce Assistant Secretary for Export Enforcement F. Amanda DeBusk today imposed a \$13,000 civil penalty on EMC Corporation on behalf of its Data General Division (formerly the Data General Corporation), Westboro, MA. The penalty was imposed to settle allegations that Data General exported computer equipment to Israel in 1995 without the required authorization. The Department also alleged that Data General made a false statement on an export control document related to the shipment of computer equipment to Mexico.

Commerce's Office of Export Enforcement Boston Field Office investigated the case.


The Department of Commerce, through its Bureau of Export Administration, administers and enforces export controls for reasons of national security, foreign policy, nonproliferation and short supply. Criminal penalties, as well as administrative sanctions, can be imposed for violations of the regulations.

the due dates specified herein. Data General will be assessed, in addition to interest, a penalty charge and an administrative charge. as more fully described in the attached Notice.

THIRD. that, as authorized by Section 11 (d) of the Act. the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration. or continuing validity of any export license. permission. or privilege granted. or to be granted. to Data General. Accordingly, if Data General should fail to pay in a timely manner the civil penalty set forth above. the undersigned will enter an Order under the authority of Section 11(d) of the Act denying all of Data General's export privileges for a period of one year from the date of this Order.

FOURTH, that the proposed Charging Letter, the Settlement Agreement. and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter. is effective immediately.


F. Amanda DeBusk
Assistant Secretary
for Export Enforcement

Executed this 3rd day of August, 2000.

on allegations that, on or about August 4, 1995, Data General provided a false and misleading statement of material fact to a United States Government agency in connection with the use or preparation of an export control document related to the export of computer equipment to Mexico, in violation of Section 787.5(a) of the former Regulations; and that, on or about December 7, 1995, Data General exported computer equipment to Israel without the validated export license required by Section 773.1 (b) of the former Regulations, in violation of Section 757.6 or the former Regulations;

BXA and Data General having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having **been** approved by me:

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$ 13,000 is assessed against Data General which shall be paid to the U.S. Department of Commerce within 30 days from the date of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by

been restructured and reorganized; the reorganized and restructured Regulations establish the procedures that apply to this matter.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
EMC CORPORATION)
4400 Computer Drive)
Westboro. Massachusetts 01580.)
)
Resuondent)

ORDER

The Office of Export Enforcement. Bureau of Export Administration, United States Department of Commerce (BXA), having notified EMC Corporation, on behalf of its Data General Division (formerly the Data General Corporation) (hereinafter referred to as “Data General”), of its intention to initiate an administrative proceeding against Data General, pursuant to Section 13(c) the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000)) (the “Act”),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2000)) (the “Regulations”)?’ based

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R.. 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R.. 1997 Comp. 306 (1998)), August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), and August 10, 1999 (3 C.F.R., 1999 Comp. 302 (2000)). continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S .C .A. §§ 1701-1706 (1991 & Supp. 2000)).

² The violations at issue occurred in 1995. The Regulations governing the violations at issue are found in the 1995 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995)). Those Regulations define the various violations that BXA alleges occurred and are referred to hereinafter as the “former Regulations.” Since that time, the Regulations have

Settlement Agreement in any administrative or judicial proceeding and that neither party shall be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

EMC CORPORATION,
ON BEHALF OF ITS
DATA GENERAL DIVISION

BY: Mark D. Menefee
Mark D. Menefee
Director
Office of Export Enforcement

BY: Paul T. Dacier
Paul T. Dacier
Senior Vice President and General Counsel

Date: 7/31/00

Date: July 21, 2000

export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.

3. Data General agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the appropriate Order, when entered), including, without limitation, any right: (a) to an administrative hearing regarding the allegations in the proposed Charging Letter; (b) to request a refund of the civil penalty imposed pursuant to this Settlement Agreement and the appropriate Order, when entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.

4. BXA agrees that, upon entry of the appropriate Order, it will not initiate any administrative proceeding against Data General in connection with any violations of the Act or the former Regulations arising out of the transactions identified in the proposed Charging Letter.

5. Data General understands that BXA will make the proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered, available to the public.

6. BXA and Data General agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an appropriate Order is not issued by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BXA and Data General agree that they may not use this

WHEREAS, Data General neither admits nor denies the allegations contained in the proposed Charging Letter:

WHEREAS, Data General wishes to settle and dispose of all matters alleged in the proposed Charging Letter by entering into this Settlement Agreement, and:

WHEREAS, Data General agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (appropriate Order):

NOW THEREFORE, Data General and BXX agree as follows:

1. BXA has jurisdiction over Data General, under the Act and the Regulations, in connection with the matters alleged in the proposed Charging Letter.

2. BXA and Data General agree that the following sanction shall be imposed against Data General in complete settlement of all alleged violations of the Act and the former Regulations set forth in the proposed Charging Letter:

- (a) Data General shall be assessed a civil penalty of \$13,000, which shall be paid to the U.S. Department of Commerce within 30 days of the date of entry of an appropriate Order;
- (b) As authorized by Section 1 l(d) of the Act, the timely payment of the civil penalty agreed to in paragraph 2(a) is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Data General. Failure to make timely payment of the civil penalty shall result in the denial of all Data General's

WHEREAS, the Office of Export Enforcement, Bureau of Export Administration (BXA), has notified Data General of its intention to initiate a proceeding against it. pursuant to the Act and the Regulations, based on allegations that, on or about August 4, 1995, Data General provided a false and misleading statement of material fact to a United States Government agency in connection with the use or preparation of an export control document related to the export of computer equipment to Mexico, in violation of Section 787.5(a) of the former Regulations; and that, on or about December 7, 1995, Data General exported computer equipment to Israel without the validated export license required by Section 772.1(b) of the former Regulations, in violation of Section 787.6 of the former Regulations.

WHEREAS, Data General received notice of issuance of the proposed Charging Letter pursuant to Section 766.18(a) of the Regulations;

WHEREAS, Data General has reviewed the proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; it fully understands the terms of this Settlement Agreement and the Order: it enters into this Settlement Agreement voluntarily and with full knowledge of its rights, and it states that no promises or representations have been made to it other than the agreements and considerations herein expressed:

1997 Comp. 306 (1998)), August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), and August 10, 1999 (3 C.F.R., 1999 Comp. 302 (2000)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)).

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D. C. 20230

In the Matter of:)
)
EMC CORPORATION)
4400 Computer Drive)
Westboro, Massachusetts 01580,)
)
Respondent)

SETTLEMENT AGREEMENT

This Agreement is made by and between EMC Corporation, on behalf of its Data General Division {formerly the Data General Corporation) (hereinafter referred to as "Data General"). and the Bureau of Export Administration. United States Department of Commerce, pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999)) (the Regulations).¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000)) (the Act).'

¹ The violations at issue occurred in 1995. The Regulations governing the violations at issue are found in the 1995 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995)). Those Regulations define the various violations that BXA alleges occurred and are referred to hereinafter as the "former Regulations." Since that time, the Regulations have been restructured and reorganized; the reorganized and restructured Regulations establish the procedures that apply to this matter.

² The ~~Act~~ expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R.,

Data General is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a consent settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter.

Accordingly: Data General's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of Data General's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: David C. Recker, Esq." below the address. Mr. Recker may be contacted by telephone at (202) 482-53 11.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

Enclosure

Facts constituting violations:

Charge 1

On or about August 4, 1995, Data General exported U.S. -origin computer parts to Mexico. In the course of making this shipment, Data General prepared and filed an export control document with an agency of the United States government representing that the shipment described therein complied with the provisions of General License GLV. as set forth in Section 771.5 of the former Regulations. In fact, the shipment did not comply with the provisions of General License GLV. BXX alleges that, by making a false or misleading statement of material fact directly or indirectly to a United States government agency in connection with the preparation or use of an export control document, Data General committed one violation of Section 787.5(a) of the former Regulations.

Charge 2

On or about December 7, 1995, Data General exported computer equipment to Israel without the validated export license required by Section 772.1(b) of the former Regulations. BXA alleges that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order, or license issued thereunder, Data General committed one violation of Section 787.6 of the former Regulations.

BXA alleges that Data General committed one violation of Section 787.5(a) and one violation of Section 787.6, for a total of two violations of the former Regulations.

Accordingly, Data General is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation (~~see~~ Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If Data General fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.